

What's the status of medical assistance in dying in Canada?

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Canada is on track to have one of the world's most expansive assisted dying programs, but concerns about safeguards and clinical standards persist.

More than 31 000 people have received medical assistance in dying (MAiD) in Canada since the service became legal in 2016, with the number of recipients growing steadily each year.

So far, the average age of recipients is 76. Most have had terminal cancer or heart disease, although the number of recipients with non-terminal conditions is rising.

People whose natural death was not foreseeable accounted for 2.2% of MAiD recipients in 2021, the first year they could apply, with nearly half reporting neurological conditions.

MAiD has risen particularly in Quebec, accounting for more than 5% of all deaths in the province between 2021 and 2022 — the highest percentage of any jurisdiction globally.

Expanding eligibility

Canada currently allows MAiD for capable, consenting adults suffering from “grievous and irremediable” conditions, excluding mental illness as a sole underlying condition.

Approvals for MAiD follow two tracks, with expedited access for people whose natural death is foreseeable and a 90-day waiting period for other recipients.

People with mental illness as their sole underlying condition were supposed to gain access to MAiD under the second track this spring. However, the federal government recently postponed that expansion to March 2024.

Justice Minister David Lametti said many provinces were ready to provide MAiD for people with mental disorders by

the original deadline. Still, the government sought the extension to give the medical community more time to prepare.

“We need to be prudent. We need to move step by step, making sure that people within the profession, [and] Canadian society at large, have internalized this step,” Lametti told reporters.

Canada's special joint committee on MAiD issued a report in February this year recommending the government expand the service to people with mental illness and mature minors, and via advance requests so that people can receive MAiD if they become incapacitated.

The cross-party committee of MPs and senators heard from close to 150 expert witnesses and received more than 350 briefs and other correspondence during six months of consultations in 2022. However, their recommendations were not unanimous, with Conservative members dissenting.

If the government implements the group's recommendations, Canada would have the most permissive MAiD laws in the world — a “radical expansion,” according to Conservative MP Michael Cooper, one of the committee's vice-chairs.

MAiD for mental illness

A recent poll by Angus Reid found that although six in 10 Canadians support MAiD in its current form, only one in three support allowing people to seek MAiD purely based on mental illness.

Uncertainties persist about how to assess if a person with mental illness is capable of consenting, how to distinguish between MAiD requests and suicidal thoughts requiring treatment, and how to determine if the suffering caused by psychiatric disorders is truly irremediable.

However, the special joint committee noted that these challenges aren't unique to providing MAiD to people with mental disorders or universal to MAiD requests related to mental illness.

Psychiatric MAiD remains rare in other countries that allow it, accounting for 1%–2% of assisted deaths, according to Tyler Black of the University of British Columbia. In the Netherlands, for example, adults have an 8% lifetime risk of suicidal thoughts, yet just 0.0004% receive psychiatric MAiD annually.

“There is simply no credible foundation for the fear that allowing MAiD for psychiatric conditions would create a flood of deaths in Canada,” Black stated.

Even so, the special joint committee raised concerns that “there has not been sufficient time to develop standards of practice” for providing MAiD to people with mental conditions. As such, they recommended the government reconvene the committee later in 2023 to “verify the degree of preparedness” before the law changes in 2024.

The government has appointed an expert group to create MAiD practice standards and is supporting the development of an accredited training curriculum for clinicians by the end of the year.

Variation in practice

There is still a lot of variability in the clinical interpretation of MAiD laws, said Madeline Li, a cancer psychiatrist and former head of University Health Network's MAiD program.

Because the law focuses primarily on patient autonomy, there isn't much room for clinical judgment, which has led some MAiD providers to approach assessments in a checklist fashion, Li said. “We say, ‘Let's figure out if you can have it,’ but we

don't back up and say, 'Let's talk about whether you're making the right decision for you.'"

Li recalls the moral distress she felt providing MAiD to a young man with a highly treatable cancer. Seven other clinicians had been uncomfortable with the man's request, but because he refused treatment, his condition was technically irremediable and thus eligible for MAiD.

"I gave MAiD against my clinical judgment because I will always do what's in the best interest of a patient if they have made a clear and reasoned decision," Li said. However, she described feeling "stuck" because, unlike other countries, Canada doesn't require patients to try alternatives to MAiD — only to consider them seriously.

Moreover, Li said, the law doesn't require clinicians to meaningfully discuss a patient's desire for death or the societal factors that may contribute to their request. Practice guidelines and training can emphasize the importance of these discussions, but unless they're enshrined in law, they're ultimately optional.

Canada has already seen cases of people seeking MAiD owing to a lack of disability support, inadequate housing, or fears of homelessness. Meanwhile, at least four veterans have reported feeling pressured to consider MAiD by a federal caseworker who has since left their position.

"We have learned that as you expand MAiD... it switches from being initially something that was compassionate relief for end-of-life suffering to facilitating suicide for ending life suffering, and that's very different," says Sonu Gaiind, chief of psychiatry at Humber River Hospital and a professor at the University of Toronto's Temerty Faculty of Medicine.

However, according to Dalhousie University law professor and medical ethicist Jocelyn Downie, extending MAiD to people with mental disorders is just restoring rights already confirmed in *Carter v. Canada* — the constitutional challenge that struck down prohibitions on MAiD for competent adults.

Mature minors

Looking beyond competent adults, the special joint committee recommended the government allow MAiD for minors with terminal illnesses who are deemed capable of making the decision, with no minimum age limit.

Very few jurisdictions allow MAiD for minors, with the Netherlands allowing access for those aged 12 and older and Belgium setting no minimum age so long as the child has the capacity to make the decision.

Some witnesses pointed out that minors in Canada already make decisions about withholding or ceasing treatment, even when those decisions may hasten death, while others felt the decision to seek MAiD was too weighty for minors to make.

Across the board, witnesses emphasized the need for greater engagement with affected youth and their families about MAiD.

To that end, the committee recommended the government undertake consultations and fund research on minors' views and experiences with MAiD within the next five years.

Given these "significant knowledge gaps," Conservative members opposed expanding access to minors "so long as these issues remain unresolved."

Advance requests

Under Canada's current MAiD laws, people with a terminal illness who have arranged for MAiD on a particular day but become incapacitated beforehand can still receive the procedure if they don't demonstrate refusal or resistance.

However, the special joint committee heard that this puts pressure on people to arrange MAiD sooner than later, and MAiD providers remain hesitant to administer the procedure without explicit consent.

The committee recommended the government allow people diagnosed with serious and incurable conditions leading to incapacity to make advance requests setting out the conditions under which they would want to receive MAiD.

While the committee noted strong support for the measure, some witnesses raised concerns about difficulties interpreting advance requests and the potential for coercion and abuse.

Among other safeguards, witnesses emphasized the importance of periodically reaffirming advance requests for MAiD, sharing the documents with family and health providers, and including clear, observable criteria for triggering the request, such as being bedridden or unable to eat.

Quebec legislation

The committee also recommended that legislators look to Quebec's experience for guidance. The province recently tabled legislation to allow people with serious and incurable illnesses to make advance requests for MAiD.

Under Bill 11, advance requests for MAiD must be free and informed, notarized in the presence of witnesses, and clearly describe the level of suffering a person deems intolerable. Capable patients can withdraw their requests at any time, and two professionals must sign off before an incapacitated person receives MAiD per an advance request.

The bill would also require palliative care hospices to offer MAiD, as some hospice patients are forced to take ambulances to other facilities to receive the procedure.

"MAiD is an end-of-life care, and I emphasize the word care," said Sonia Bélanger, Quebec minister responsible for seniors. "It's care that allows people to live their final moments as they want."

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